STATEMENT BY REP. WILLIAM S. MOORHEAD (D., PA.), CHAIRMAN, HOUSE FOREIGN OPERATIONS AND GOVERNMENT INFORMATION SUBCOMMITTEE, ON PRESIDENT'S SUGGESTED AMENDMENTS TO H. R. 12471, FREEDOM OF INFORMATION ACT AMENDMENTS

The proposed amendments to the Freedom of Information Act submitted today by President Ford are unacceptable at this time.

The bill, which was vetoed by the President on October 17, was the result of over three years of study and hearings by the House and Senate. The bill was approved by an overwhelming vote by both bodies and reflects every possible compromise consistent with the congressional determination to enforce the people's right to know what their government is doing.

During the House-Senate conference on the vetoed measure, the President sent a letter to all conferees which outlined in detail his objections to the legislation. Each of the President's objections was carefully considered by the conferees, and changes were made both to the bill and the conference report to meet these objections.

The five pages of suggested amendments submitted by the President today go far beyond the concerns expressed earlier by him. If these amendments were accepted, they would severely limit, if not destroy, the reforms made by H. R. 12471.

I repeat my statement of October 18 in calling for an override of the Presidential veto.

Recognizing the necessity for cooperation between the Legislative and Executive Branches, I will call hearings by my Foreign Operations and Government Information Subcommittee after the veto

override in order to review the Administration's suggestions and determine if future amendments to the Freedom of Information Act may be needed. I must stress, however, that any additional amendments must be subject to full hearings and study. They cannot be grafted upon a carefully drafted bill at the last minute as is suggested by the President.

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THE WHITE HOUSE

WASHINGTON

October 25, 1974

Dear Bill:

Because of our previous correspondence on the Freedom of Information Act Amendments (H.R. 12471) and your leadership in moving this legislation through Congress, I wanted you to have the enclosed amendments I have today submitted to the Speaker.

While I realize we have had our differences on this bill, I think they are few compared to the many compromises and the substantial agreements which have been worked out over the past several months. I ask your further help and cooperation in obtaining early consideration of these proposed amendments so that we may accomplish our common goal of producing viable freedom of information legislation before the close of the 93d Congress.

As before, Administration representatives are ready to meet with you and your staff at any time to help work out a final product.

Sincerely,

Gerald R. Ford

Honorable William S. Moorhead
House of Representatives
Washington, D. C. 20515

Enclosures

Review of Classified Documents
Amendment to H.R. 12471

That Section 2(a) of H.R. 12471 be amended by adding at the end of proposed paragraph (1) contain therein the following:

"Provided: That for matters described in (A), above, a court has jurisdiction to enjoin the agency from withholding agency records and to order the production of any agency records to the complainant unless it finds that there is a reasonable basis to support the classification pursuant to such Executive order. The court may examine such records in camera only if it is necessary, after consideration by the court of all other attendant material, in order to determine whether such classification is proper."

Review of Classified Documents

This amendment would, as did the provisions it replaces, permit a court to review documents classified by agencies in the interest of national defense or foreign policy and to insure the reasonableness of that classification. However, the proposed language would permit a court to review the document itself and to disclose the document only if there is no reasonable basis to support the classification. This amendment removes an unconstitutional arrangement in H.R. 12471 as vetoed whereby a highly sensitive document pertaining to our national defense would have to be disclosed even if the classification were reasonable. The new language simply provides that after a review of all the evidence pertaining to a classified document, including the document itself if necessary, the document may be disclosed unless there is a reasonable basis for the classification by the agency. The burden of proof remains upon the agency to sustain the reasonableness of the classification.

Time Limits and Costs
Amendment to H.R. 12471

That Section 1(c) of H.R. 12471 be amended by:

a. Substituting the word "thirty" for the word "ten" appearing in proposed paragraph (6)(A)(i) contained therein; and deleting the second sentence of proposed paragraph (6)(B), and substituting therefor the following sentence:

> "No such notices shall specify dates that would result in extensions with respect to a single request for more than fifteen working days."

b. Redesignating proposed paragraph (6)(C), paragraph (6)(D), and inserting as new paragraph (6)(C) the following:

> "(C) If the agency finds at any time before the filing of suit under subparagraph 552(a)(4)(B) above that the periods set forth in subparagraph (A) above and any extension available under subparagraph (B) above are insufficient, it may petition the United States District Court in the District of Columbia for such further extension or extensions as may be needed, setting forth with particularity the reasons therefor and with appropriate notification to the person making the request. The court shall grant such further extension or extensions

as are appropriate if it is persuaded that the agency has proceeded with due diligence in responding to the request and requires additional time in order to make its determinations properly."

That Section 1(b)(2) of H.R. 12471 be amended by deleting the period at the end of the second sentence of proposed paragraph (4)(A) contained therein and adding the following:

", except that the reasonable cost of reviewing and examining records may be charged where such cost is in excess of $100 for any request or related series of requests."

Time Limits and Costs

As vetoed, H.R. 12471 provides that following a request for documents an agency must determine whether to furnish the documents within ten days, and following an appeal from a determination to withhold documents, the agency is afforded twenty days to decide the appeal. In unusual circumstances an agency may obtain an additional ten days for either determination.

Time limits on agency action with regard to requested documents are important additions to the public's right to know of the operations of its Government, and several agencies have already voluntarily adopted time limits for their responses. Experience with these time limits indicates that the restrictions in H.R. 12471 are impracticable. Because of the large number of documents often requested, their decentralized location and the importance of other agency business it would often be impossible to comply with requests in the time allotted.

This amendment would provide thirty days for the initial determination and would provide an additional fifteen days in unusual circumstances. Furthermore, in exceptional circumstances, the agency would be authorized to seek additional time from a court if it could demonstrate due diligence in responding to a request. For particularly burdensome requests, an agency would also be permitted to charge for the cost of reviewing requested documents if such cost exceeded $100 for each request or each series of related requests. This provision would help to defray those unusual expenses in responding to requests for documents at a time when we are seeking to limit our Governmental expenditures. Furthermore, the additional time afforded agencies in responding to requests will lead to more responsive determinations and more efficient use of agency personnel and resources, while still providing for prompt agency response to requested documents.

Investigatory Records
Amendment to H.R. 12471

That Section 2(b) of H.R. 12471 be amended by adding after the word "that" in the second line of proposed paragraph (7) the phrase "there is a substantial possibility that"; by deleting the word "criminal" in the seventh line of proposed paragraph (7); and by adding at the end of that proposed paragraph the following sentence:

"Provided: That where the agency head, after considering the results of a preliminary examination of the files involved in the request, personally finds, in light of (1) the number of documents covered by the request, (2) the proportion of such documents which consist of reports by Federal or State investigative agents or from confidential sources, and (3) the availability of personnel of the type needed to make the required review and examination, that application of the foregoing tests on a record-by-record basis would be impracticable, the agency may apply such tests to the investigatory file as a whole or to reasonably segregable portions thereof; except that this provision shall not be applied to files which

the agency has reason to believe contain records which are not investigatory records compiled for law enforcement purposes, nor shall it protect from disclosure any records which, as a result of the preliminary examination or for any other reason, do not require further significant review or examination."

Investigatory Records

The first portion of this revision is intended to render more realistic the showing of harmful effect which the Government would have to make in order to sustain the withholding of investigatory records. It is simply not possible in most cases to establish that release "would" cause particular harm of the type described. But when what is involved is harm so enormous as depriving a defendant of the right to a fair trial, invading personal privacy, compromising our law enforcement operations, and endangering the life or physical safety of law enforcement personnel, existence of a substantial possibility that the harmful effect will ensue ought to be adequate reason for withholding the document.

The second portion broadens the bill's protection of confidential information provided to a criminal law enforcement agency to such information provided to an agency with civil law enforcement functions. There are several agencies that perform important civil law enforcement functions, and often civil law enforcement investigations directly lead to criminal investigations. In these instances it is essential that confidential information furnished only by a confidential source be protected from premature disclosure.

In the past, all records contained in investigatory files compiled for law enforcement purposes have been exempt from disclosure under the Freedom of Information Act. Although such a categorical exemption is too broad, Congress originally adopted that provision in 1966 because of special characteristics of these files which the present bill entirely disregards. First, improper release of the information they contain can be exceptionally harmful, and thus particularly careful screening is required; second, many of these files are of enormous size; and finally, the proportion of nonreleasable information they contain is typically much higher than that contained in other Government files. The combination of

these factors makes it impracticable in some situations to devote the efforts of our law enforcement personnel to a paragraph-by-paragraph screening of these files. This is so whether or not the time which these personnel take from law enforcement duties is paid for by the person making the request. While this consideration does not justify the categorical exception of all investigatory files, it cannot be entirely ignored. The amendment will enable the agency head himself to make a case-by-case finding of impracticability, on the basis of specific factors which can be reviewed by the courts. This resolution is both reasonable and not subject to uncontrolled application by the Executive branch. The last clause of the sentence also prevents this limited "investigatory files" exemption from being abused so as to protect records which are not investigatory records or which the agency knows do not qualify for any specific exemption from disclosure.

"Odds possible
before 90 days"

MAY